IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GLORIA S. PAHL,

Plaintiff,

v.

FAIRFIELD FARROW & STROTZ PC,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

1. Defendant Fairfield Farrow & Strotz PC is a law firm that acts as debt collectors. It uses an auto-dialer service to leave voicemail messages, without identifying itself, in attempting to collect debts.

2. Fairfield Farrow & Strotz continued to attempt to collect a debt from Plaintiff Gloria S. Pahl without providing Ms. Pahl with verification of the debt, despite Ms. Pahl's request that it do so.

3. Ms. Pahl seeks damages under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* ("FDCPA"), under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the New Mexico Unfair Practices Act, NMSA 1978 §§ 57-12-1 *et seq.* ("UPA"), including prospective injunctive relief.

Jurisdiction

4. This Court has jurisdiction under the FDCPA, 15 U.S.C. § 1692k(d), under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under 28 U.S.C. §§ 1331 & 1337. This Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

5. Venue is appropriate in this District because all parties resides in this District, Fairfield Farrow & Strotz does business in this District, and all relevant events took place in this District.

Parties

6. Plaintiff Gloria S. Pahl resides in Farmington, New Mexico. She is a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3).

7. Defendant Fairfield Farrow & Strotz PC is a New Mexico law firm whose business includes the collection of consumer debts. It regularly collects or attempts to collect debts owed or due or asserted to be owed or due another. Fairfield Farrow & Strotz is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

Facts

8. Ms. Pahl defaulted on a Discover credit card.

9. Discover Bank sold, assigned or transferred this account to Fairfield Farrow & Strotz for collection.

10. Upon information and belief, Discover Bank sold, assigned or transferred numerous accounts to Fairfield Farrow & Strotz for collection.

11. In a letter dated February 7, 2006, Fairfield Farrow & Strotz demanded Ms. Pahl pay this debt. *See*, Exhibit A, letter.

12. In the February 7 letter, Fairfield Farrow & Strotz informed Ms. Pahl that she had 30 days to dispute the validity of the debt. *See*, *id.*

13. In a letter dated February 15, 2006, Ms. Pahl requested that Fairfield Farrow & Strotz "provide me proof, or verification, that I owe such a debt to you." *See*, Exhibit B, letter.

14. Ms. Pahl also requested that Fairfield Farrow & Strotz "stop contacting me about this or any other matter, except to provide me with proof that I owe what you say I owe **or** to notify me that you are dismissing this matter with prejudice and without costs." *See, id.*

15. Fairfield Farrow & Strotz received the February 15 letter shortly after February 15, 2006.

16. Fairfield Farrow & Strotz never provided Ms. Pahl verification of the debt.

17. Fairfield Farrow & Strotz, or a calling service hired by Fairfield Farrow & Strotz, telephoned Ms. Pahl at her home numerous times, without leaving a voicemail message, after Fairfield Farrow & Strotz had received the February 15 letter. Ms. Pahl knows this fact because Fairfield Farrow & Strotz's telephone number (866) 338-4862 showed up repeatedly on her telephone's caller identification display.

18. On March 3, 2006, Fairfield Farrow & Strotz, or a calling service hired by Fairfield Farrow & Strotz, left a prerecorded message for Ms. Pahl on the voicemail for her home telephone. Fairfield Farrow & Strotz or the calling service stated that it had an "important message" for Ms. Pahl. Fairfield Farrow & Strotz did not identify itself in the message. Nor did the prerecorded message provide any identification of the caller. It asked Ms. Pahl to call (866) 338-4862.

19. In response, Ms. Pahl telephoned (866) 338-4862. The recorded message that was activated when this call was answered stated that she had reached Fairfield Farrow & Strotz.

20. On March 24, 2006, Ms. Pahl again called (866) 338-4862. The recorded message that was activated when this call was answered stated that she had reached Fairfield Farrow & Strotz. Ms. Pahl left a voicemail message in which she stated that she was returning the

prerecorded message left for her. She also stated that she did not know to whom she was supposed to talk because the message did not give a business or individual name.

21. In response to Ms. Pahl's voicemail message, Sonia Larson from Fairfield Farrow & Strotz telephoned Ms. Pahl. Ms. Larson stated that Fairfield Farrow & Strotz had left the message concerning Ms. Pahl's Discover account and wanted to "work out a payment plan on this, or possibly, if you are in the position to do a one-time lump sum settlement."

22. Ms. Pahl retained counsel, who informed Fairfield Farrow & Strotz of three published federal district court opinions in which the respective federal courts held that a debt collector cannot legally leave a voicemail message for a debtor, without identifying itself. *See*, *Joseph v. J. J. MacIntyre Companies LLC*, 281 F.Supp.2d 1156 (N.D. Cal. 2003); *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.Supp.2d 1104 (C.D. Cal. 2005); *Foti v NCO Financial Systems, Inc.*, 424 F.Supp.2d 653 (S.D. N.Y. 2006). *See*, Exhibit C, letter.

23. Fairfield Farrow & Strotz claimed to have legal authority to support its position, but it failed to provide any legal citations to Ms. Pahl's counsel. *See*, Exhibit D, letter.

24. As a result of Fairfield Farrow & Strotz's actions, Ms. Pahl suffered actual damages, including frustration, aggravation and lost time.

First Claim for Relief: Violations of the FDCPA

25. Fairfield Farrow & Strotz's actions violate the FDCPA, including but not limited to, 15 U.S.C. §§ 1692c, 1692e and 1692g.

26. Ms. Pahl is entitled to recover statutory damages, actual damages and reasonable attorney fees and costs.

27. Ms. Pahl is also entitled to declaratory judgment that the actions of Fairfield Farrow & Strotz, in leaving voicemail messages, without identifying itself, in attempts to collect debts from New Mexicans, violates the FDCPA.

Second Claim for Relief: New Mexico Unfair Practices Act

28. Fairfield Farrow & Strotz's actions violate the New Mexico Unfair Practices Act, NMSA 1978 § 57-12-2(D) generally and § 57-12-2(D)(14) and (15) specifically.

29. Fairfield Farrow & Strotz willfully engaged in these violations of the UPA.

30. Ms. Pahl is entitled to recover actual or statutory damages, trebled, plus reasonable attorney fees and costs.

31. Ms. Pahl is also entitled to injunctive relief to prevent Fairfield Farrow & Strotz from leaving voicemail messages, without identifying itself, in attempts to collect debts from her and other New Mexicans.

Request for Relief

Ms. Pahl requests that this Court:

A. Provide declaratory relief that Fairfield Farrow & Strotz violated the FDCPA and the UPA;

B. Enjoin Fairfield Farrow & Strotz from leaving voicemail messages, without identifying itself, in attempts to collect debts from her and other New Mexicans;

C. Award statutory and actual damages for violations of the FDCPA;

D. Award statutory or actual damages, trebled, for violations of the UPA;

E. Award reasonable attorney fees and costs; and

F. Provide such other relief as it deems just and proper.

Respectfully submitted,

FEFERMAN & WARREN

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